

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

OPEN MEETING ITEM



ARIZONA CORPORATION COMMISSION



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2001 SEP 18 A 10:58

AZ CORP COMMISSION
DOCUMENT CONTROL

DATE: September 18, 2001

DOCKET NO: T-03993A-01-0128

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Stephen Gibelli. The recommendation has been filed in the form of an Order on:

GATES COMMUNICATIONS, INC.
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 27, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

OCTOBER 2 AND 3, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

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Brian C. McNeil
BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
GATES COMMUNICATIONS, INC. FOR A
7 CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
8 RESOLD INTEREXCHANGE
TELECOMMUNICATIONS SERVICES, EXCEPT
9 LOCAL EXCHANGE SERVICES.

DOCKET NO. T-03993A-01-0128

DECISION NO. _____

ORDER

10 Open Meeting
October 2 and 3, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On February 13, 2001, Gates Communications, Inc. ("Applicant" or "Gates") filed
17 with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to
18 provide competitive resold interexchange telecommunications services within the State of Arizona.

19 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
20 telecommunications providers ("resellers") were public service corporations subject to the
21 jurisdiction of the Commission.

22 3. Applicant is a Washington corporation, authorized to do business in Arizona since
23 2001.

24 4. Applicant is a switchless reseller, which purchases telecommunications services from
25 a variety of carriers.

26 5. On March 9, 2001, the Commission's Utilities Division Staff ("Staff") filed its Staff
27 Report in this matter. In its Staff Report, Staff stated that Gates Communications, Inc. provided
28 financial statements for the ten months ending October 31, 2001. These financial statements list

1 assets of \$518,650, total equity of \$105,361, and a net income of \$128,267. Based on the foregoing,
2 Staff believes that Gates lacks sufficient financial resources to be allowed to charge customers any
3 prepayments, advances, or deposits. In its application, Gates stated that it does not charge its
4 customers any prepayments, advances, or deposits.

5 6. Staff recommended approval of the application subject to the following conditions,
6 that:

7 (a) The Applicant shall comply with all Commission rules, orders, and other
8 requirements relevant to the provision of intrastate telecommunications service;

9 (b) The Applicant shall maintain its accounts and records as required by the
10 Commission;

11 (c) The Applicant shall file with the Commission all financial and other reports
12 that the Commission may require, and in a form and at such times as the Commission
may designate;

13 (d) The Applicant shall maintain on file with the Commission all current tariffs
14 and rates, and any service standards that the Commission may require;

15 (e) The Applicant shall comply with the Commission's rules and modify its tariffs
16 to conform to these rules if it is determined that there is a conflict between the
Applicant's tariffs and the Commission's rules;

17 (f) The Applicant shall cooperate with Commission investigations of customers
18 complaints;

19 (g) The Applicant shall participate in and contribute to a universal service fund, as
20 required by the Commission;

21 (h) The Applicant shall notify the Commission immediately upon changes to the
Applicant's address or telephone number;

22 (i) If at some future date, the Applicant wants to charge any prepayments,
23 advances, or deposits, it must file information with the Commission that demonstrates
24 the Applicant's financial viability. Upon receipt of such filing, Staff will review the
25 information provided and the Commission will make a determination concerning the
Applicant's financial viability and whether customers' prepayments, advances, or
deposits should be allowed.

26 (j) The Applicant's intrastate interexchange service offerings should be classified
27 as competitive pursuant to A.A.C. R14-2-1108;

28 (k) The rates proposed by the Applicant in its most recently filed tariffs should be

1 approved on an interim basis. The maximum rates for these services should be the
2 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates
3 for the Applicant's competitive services should be the Applicant's total service long
4 run incremental costs of providing those services;

5 (l) In the event that the Applicant states only one rate in its proposed tariff for a
6 competitive service, the rate stated should be the effective (actual) price to be charged
7 for the service as well as the service's maximum rate, and;

8 (m) The Applicant shall certify that all notification requirements have been
9 completed.

10 7. Staff also recommended approval of Gates Communications, Inc.'s application subject
11 to the following conditions:

12 (a) That the Applicant file conforming tariffs within 30 days of an Order in this
13 matter, and in accordance with the Decision;

14 (b) That the Applicant file in this Docket, within 18 months of the date it first
15 provides service following certification, sufficient information for Staff
16 analysis and recommendation for a fair value finding, as well as for an analysis
17 and recommendation for permanent tariff approval. This information must
18 include, at a minimum, the following:

19 1. A dollar amount representing the total revenue for the first twelve months
20 of telecommunications service provided to Arizona customers by Gates
21 Communications, Inc. following certification, adjusted to reflect the
22 maximum rates that the Applicant has requested in its tariff. This adjusted
23 total revenue figure could be calculated as the number of units sold for all
24 services offered times the maximum charge per unit.

25 2. The total actual operating expenses for the first twelve months of
26 telecommunications service provided to Arizona customers by the
27 Applicant following certification.

28 3. The value of all assets, listed by major category, including a description of
the assets, used for the first twelve months of telecommunications services
provided to Arizona customers by the Applicant following certification.
Assets are not limited to plant and equipment. Items such as office
equipment and office supplies should be included in this list.

(c) Gates Communications, Inc.'s failure to meet the condition to timely file
sufficient information for a fair value finding and analysis and
recommendation of permanent tariffs shall result in the expiration of the
Certificate of Convenience and Necessity and of the tariffs.

8. The Staff Report also stated that Applicant has no market power and the

1 reasonableness of its rates would be evaluated in a market with numerous competitors.

2 9. On June 21, 2001, a Procedural Order was issued requiring exceptions to the Staff
3 Report or a request that a hearing be set, to be filed by August 29, 2001. No exceptions were filed to
4 the Staff Report, nor did any party request that a hearing be set.

5 10. On July 18, 2001, Gates filed Affidavits of Publication indicating compliance with the
6 Commission's notice requirements.

7 11. On August 29, 2000, the Arizona Court issued its Opinion in US WEST
8 Communications, Inc. v. Arizona Corporation Commission, 1 CA-CV 98-0672, holding that "the
9 Arizona Constitution requires the Commission to determine fair value rate bases for all public service
10 corporations in Arizona prior to setting their rates and charges."

11 12. On October 26, 2000, the Commission filed a Petition for Review to the Supreme
12 Court.

13 13. On February 13, 2001, the Commission's Petition was granted.

14 CONCLUSIONS OF LAW

15 1. Applicant is a public service corporation within the meaning of Article XV of the
16 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

17 2. The Commission has jurisdiction over Applicant and the subject matter of the
18 application.

19 3. Notice of the application was given in accordance with the law.

20 4. Applicant's provision of resold interexchange telecommunications services is in the
21 public interest.

22 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
23 resold interexchange telecommunications services in Arizona.

24 6. Staff's recommendations in Findings of Fact No. 6 and 7 are reasonable and should be
25 adopted.

26 ORDER

27 IT IS THEREFORE ORDERED that the application of Gates Communications, Inc. for a
28 Certificate of Convenience and Necessity for authority to provide competitive resold interexchange

1 telecommunications services, except local exchange services, is hereby granted, except that Gates
2 shall not be authorized to collect any prepayments, advances, or deposits.

3 IT IS FURTHER ORDERED that Gates Communications, Inc. shall comply with Staff's
4 recommendations as set forth in Findings of Fact Nos. 6 and 7.

5 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision, Gates
6 Communications, Inc. shall notify the Compliance Section of the Arizona Corporation Commission
7 of the date that it will begin or has begun providing service to Arizona customers.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
10
11

12 CHAIRMAN

COMMISSIONER

COMMISSIONER

13
14
15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of _____, 2001.

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21 BRIAN C. McNEIL
22 EXECUTIVE SECRETARY

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DISSENT _____
SG:mlj

1 SERVICE LIST FOR:

GATES COMMUNICATIONS, INC.

2 DOCKET NO.:

T-03993A-01-0128

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A handwritten signature in black ink, appearing to read "B. C. McNeil", written over the typed name and title.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

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